

# CITY & STATE

## Know where to smoke? Maybe not

### ■ Ordinance can be confusing, and City Council may broaden the ban

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No one was smoking inside Taco Milagro on Kirby when city inspector Jeff Conn took a seat at a table during a recent

weekday lunch hour.

But Conn, the Health Department's lone smoking-ordinance inspector, had come prepared. He pulled a small tube out of his binder, puffed some artificial smoke into the air, then watched to see if it wafted from one area of the restaurant to another.

Conn was investigating a complaint that the food and drink establishment had violated the city's smoking ordi-

nance, which prohibits smoking in dining areas of restaurants. Operators of restaurants that also have bars must take measures to keep smoke from drifting into dining areas.

But Taco Milagro was exempt from the law, managers told him, because it qualifies as a bar, where patrons are allowed to smoke, and do.

That could change soon because City Council is considering broadening the ban. Yet

even under current rules, Conn is struggling to keep up with complaints that certain restaurants and bars have not complied.

"There's only me," Conn said, adding that the law's many exceptions make it confusing and sometimes difficult to enforce. And he only does it part time, because his job includes unrelated responsibilities.

The ordinance prohibits  
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### STOP SMOKING CLINIC

Smokers looking to quit can visit a Nicorette Stop Shop clinic this week for free. It's sponsored by GlaxoSmithKline Consumer Healthcare, the maker of Nicorette products, which are designed to help smokers kick the habit.

■ **When:** 9 a.m. to 7 p.m.  
Monday through Friday.  
Mayor Bill White plans to declare it "Houston Quit Smoking Week."

■ **Where:** 802 Milam at Rusk

■ **What:** Free one-on-one counseling, tools to assess how quitting could affect health and other resources to help smokers quit.

Source: GlaxoSmithKline Consumer Healthcare

### SMOKING BAN ENFORCEMENT

A city ordinance bans smoking in dining areas of restaurants, but allows it in bars and on outside patios. Here's how the Health Department has enforced the law between September, when it went into effect, and June:

■ **Complaints:** 243

■ **Complaints investigated:** 190

■ **Citations issued:** 7

■ **Warnings:** 147

Source: City of Houston

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smoking in dining areas of restaurants, but allows it at bars and outside patios. A citation carries up to a \$2,000 fine.

#### Revisiting the issue

The U.S. surgeon general's call last month for completely smoke-free workplaces, including restaurants and bars, bolstered efforts by some City Council members to enact a more comprehensive ban city-wide. The current ordinance, passed in March 2005 and enacted last September, requires the council to revisit the issue by this September.

The public health committee, headed by Councilwoman Carol Alvarado, is expected to begin hearings in mid-August.

"Most people know that we have a smoking ban in stand-alone restaurants," Alvarado said. "We just don't have enough inspectors to police it." She expects the public will become better informed if council approves a stricter ban, which has her support, she said.

Between September, when the ordinance went into effect, and June, the Health Department received 243 complaints and investigated 190. Only seven of those inspections resulted in citations; six were to restaurants that allowed smokers to light up in dining areas. The other was issued to an individual who refused to stop smoking within 25 feet of a building entrance, a rule that has been in effect since 2002.

Three of those restaurants paid fines of \$255, according to the Health Department. The other cases were either dismissed or are still pending.

#### Unknown violations

More than 140 business owners and individuals have received warnings for lesser violations, which do not carry fines. Restaurant bars received more than half of those warnings, often for not posting signs designating where customers can smoke or not adequately separating smoking areas of the restaurant from nonsmoking areas.

The Health Department has the authority to investigate smoking violations only when it receives a complaint. It cannot visit establishments at random to check for compliance.

"There are probably a lot of violations out there, but unless we get a complaint, we don't know about it," said Marilyn Byrd, chief of the Health Department's bureau of occupational health, radiation control and emergency medical services. The number of complaints likely would increase if the city passed a stricter ban, she said.

Byrd said she is working to train more employees to conduct inspections, and one employee in addition to Conn has been trained. But they too have other responsibilities and would require overtime to help enforce the ban, she said.

Councilwoman Shelley Sekula-Gibbs, a physician who has for years advocated a smoking ban for all workplaces, said rather than making one inspector responsible for smoking enforcement, all restaurant inspectors should be trained to watch for smoking-ordinance violations when they visit restaurants to monitor food safety.

"Many places in the city, restaurants in the city, do not enforce the smoking ordinance currently. There's a lack of education and a lack of understanding," she said.

Conn agreed that some Houstonians are confused about

how the law works.

"Since the ordinance went into effect, the general public thinks this new rule applies to every place," he said.

It doesn't.

Taco Milagro is a perfect example. It looks, to some, like a typical restaurant, with a counter where patrons can order food, a station full of condiments and dozens of tables. A sign outside reads, "Handmade food and tequila bar."

But Taco Milagro's managers told Conn it qualifies as a lounge bar, not a restaurant, because it brings in more revenue from alcohol than it does from food. They're now expected to verify that with sales receipts.

If that's true, the customer who complained may have been mistaken in thinking that smoking is prohibited at the popular establishment.

Managers at Taco Milagro declined to comment to the Chronicle.

#### Rules unclear to some

Chacho's restaurant in the 6000 block of Westheimer was hit with a \$255 fine for allowing patrons to smoke in the dining area. Management hadn't realized that closing glass doors turned an outside patio into an inside dining area where smoking could not be allowed, said manager Betty Fuentes.

"It was no longer outside," she said. "That's what we didn't understand."

Most of the establishments Conn cites correct their violations before he returns for a follow-up inspection several weeks later, he said.

That was the case for Chacho's. Now, the restaurant allows smoking in the dining area only when the glass doors are wide open.